

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DANIEL D. MOSS,

Civil No. 05-792-AA
O R D E R

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

AIKEN, Judge:

Defendant United States' Motion to Dismiss (doc. 6) is granted.

Plaintiff, pro se, filed this complaint against the Internal Revenue Service (IRS) on June 2, 2005, requesting a "refund for excess taxes paid." Specifically, plaintiff filed a Class Action "on behalf of taxpayers who have overpaid their taxes under the Alternative Minimum Tax [AMT] provision of the IRS Code. Complaint, ¶ 1. On July 11, 2005, this court denied class action certification for this lawsuit with leave to renew until after the defendant had filed an Answer. See Order (doc. 5).

On August 1, 2005, defendant moved to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. Plaintiff did not file any opposition to this

1 motion. For a court to maintain subject matter jurisdiction over
2 a tax refund suit, a taxpayer must satisfy certain jurisdictional
3 prerequisites. First, a taxpayer must have "fully paid" the tax
4 for which a refund is sought. Flora v. United States, 357 U.S.
5 63 (1958). Second, the taxpayer must have filed a proper and
6 timely claim for refund with the IRS, in accordance with 26
7 U.S.C. § 7422(a)(2). Finally, the taxpayer's claim for refund
8 must either have been rejected by the IRS or not have been acted
9 upon by the IRS for six months. 26 U.S.C. § 6532(a)(1).

10 The complaint at bar fails to allege any jurisdictional
11 prerequisites for either plaintiff's potential class action or
12 regarding any individual claim plaintiff may assert as to alleged
13 excess AMT payments he made in the tax year 2002. First, the
14 complaint fails to allege that any potential plaintiff has fully
15 paid whatever tax liability is at issue for which the refund is
16 sought. Second, the complaint fails to allege that any potential
17 plaintiff filed a proper and timely claim for refund with the IRS
18 for whatever tax liability might be at issue. Finally, the
19 complaint fails to allege that a claim for refund filed with the
20 IRS by any potential plaintiff has either been rejected by the
21 IRS or has not been acted upon by the IRS for a period of six
22 months. Failure to meet these jurisdictional requirements leaves
23 this court without subject matter jurisdiction to hear this
24 claim. See Thomas v. United States, 755 F.2d 728, 729 (9th Cir.
25 1985).

26 Further, regarding any individual claim plaintiff may have
27 as to excess AMT payments he made in tax year 2002, the court
28 notes that plaintiff has already filed an action for this claim.

1 That action is currently pending before this court. See Moss v.
2 Internal Revenue Service, Civ. No. 04-1803-AS (filed on December
3 10, 2004). Therefore, any individual claim for refund for tax
4 year 2002 will be adjudicated before Judge Ashmanskas in the
5 above referenced case.

6 Defendant's motion to dismiss based on lack of subject
7 matter jurisdiction (doc. 6) is granted. All pending motions are
8 denied and this case is dismissed.

9 IT IS SO ORDERED.

10 Dated this 20 day of September 2005.

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14 _____ /s/ Ann Aiken
15 Ann Aiken
United States District Judge
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